THE

CONSTITUTION

Asserted and vindicated.

LONDON:

Printed for W. NICOLL, at the Paper-mill, in St. Paul's Church-yard, MDCCLXIII.

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BRITISH MUSEUM

THE CONSTITUTION asſerted and vindicated.

THE title of this paper, it is preſumed, ſhould engage the attention of the public. Yet if it ſhould appear to have been written upon any other motives, than thoſe of public concernment; if the writer can be ſuſpected of a deſign of raiſing the prerogative of the crown upon the ruins

of liberty, and paying a ſervile adulation to miniſtry; or, on the other ſide, if he can be charged with exerciſing the ſpirit of invective againſt the oppoſition, or even of indulging the ſpleen of laughing at ſome certain names, when joined with the ideas of honeſty, patriotiſm and virtue; if theſe can be ſuppoſed the motives of his writings, let him be treated with contempt and indignation. He has vilely betrayed the cauſe he pretended to ſupport. But, on the contrary, if he hath aſſerted the liberty of the preſs, without abuſing it; if he hath endeavoured to vindicate the rights of the conſtitution; if he hath ſtated facts with truth, and argued from them with more than the integrity of mere argument, with honeſty, and the conviction of his underſtanding, let him be read with that at-

attention, which the importance of his ſubject demands. He makes no other preface to his work.

THE conſtitution, under whoſe influence we are the happieſt people upon earth, was foreſeen, in mere theory, by the moſt ſagacious of all political writers. Yet he only foreſaw the general poſſible idea of ſuch a form of government. He deſpaired of the probability of its ever being carried into execution. Yet this form of government, the deſpair of human wiſdom, was originally found among ſavages, in the deſerts of Germany. The wild, uncultivated principles, upon which it was formed, were tranſplanted hither; to a ſoil, more kindly to them, than that of their native climate, and to a culture more attentive to their growth

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and improvement. Here they have been preſerved through a thouſand changes of deſpotiſm, tyranny, ariſtocracy, oligarchy, democracy and anarchy. They have maintained themſelves, through all theſe changes, in almoſt their firſt ſimplicity and vigour, like the *ſtamina vitæ* of a good natural conſtitution, through all the diſtempers *which fleſh is heir to*, and even the experiments of quacks and empyricks.

The firſt magiſtrate in this form of government, is indeed the principal mover, I had almoſt ſaid the ſoul of the whole ſyſtem. Many other princes of Europe have an appearance of more authority annexed to their perſons, but none more real greatneſs. He is only reſtrained from hurting himſelf, or his people.

ple. He poſſeſſes every power of doing good; indeed, every power, that can contribute to render him more beloved by his people; more reſpected and revered. Our anceſtors, as if to make their monarch ſome amends for this ſeeming want of authority, or rather to ſupport the dignity of the crown, whoſe honours they conſidered as their own, threw many circumſtances of ſplendour round him, unknown to any other, but the Sovereign of Great Britain. He is waited upon by his ſervants, with peculiar marks of reſpect and reverence. So excellent do the laws ſuppoſe him, that they declare him incapable of doing wrong. His perſon is not only ſacred, and protected from all attempts of actual violence. It is treaſon to imagine his death.

FROM hence it follows in conſequence of facts, if I may be allowed the expreſſion, not of mere reaſoning, that in the very moment, when any attempt, however unſucceſsful, is made upon his perſon; whenever any inſult, though impotent, as unmerited, is offered to his good name, in that very moment, the conſtitution is violated; whenever he is, under pretence of Law, accuſed, arraigned, condemned for crimes, which the law declares him incapable of committing, at that very moment, the conſtitution is diſſolved. Its very being is deſtroyed. We may begin to erect a better upon its ruins.

THESE, it is confeſſed, are honourable and important prerogatives. To make them more important, more honourable,

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they do not deſcend by dull ſucceſſion from king to king; by lineal deſcent from father to ſon; by divine, hereditary, indefeaſible right; by the arch-biſhop's *providentia divina*, or the biſhop's *divine permiſſion*. The preſent royal family muſt diſclaim, for their anceſtors, for themſelves and their poſterity, ſuch viſionary titles of this world; ſuch unproved and diſputable claims from the other. Their rights are founded in the conſtitution, and muſt ſubſiſt with it, let every Engliſhman ſay AMEN! for ever. Let me only be permitted to add, that in ſtricteſt propriety of expreſſion, liberty has founded all theſe prerogatives, and granted them to the crown for its own ſake, for the ſake of the people.

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THE ſecond eſtate, that enters into our political ſyſtem, is that of the nobility. It enters with greater ſplendor and dignity, than influence and power. It has its being in the conſtitution, but it receives its honours from the crown, and reflects a luſtre on the prince, from whom it receives them.

SOME of the privileges this reſpectable body enjoys, were probably granted them (ſuch as the immunity of their perſons from arreſts of debt, &c.) becauſe they were perpetual members of parliament, and conſequently their perpetual attendance was required upon the buſineſs of the nation. In other inſtances (ſuch as their pronouncing ſentence, in caſes of life and death, upon their honour) this

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very diſtinguiſhing privilege, in which the biſhops, from the ſanctity of their characters, can have no ſhare, was probably given them, to raiſe our ideas of their juſtice and integrity, that they might meditate between the prince and people, with greater dignity and weight.

I SHALL not dwell upon theſe privileges and immunities, becauſe they do not enter immediately into our preſent unhappy diſputes. The noble perſons themſelves may perhaps be hereafter employed in one of the moſt honourable offices they claim by their birth-right, that of mediating between the other eſtates, of which the conſtitution is compoſed, and moderating with equity the ſeverity of law, for the ſake of the law itſelf. I ſhall therefore only ſay, that

all their privileges were appointed by the wiſdom of our anceſtors, in view to the general honour, ſecurity, happineſs and permanency, I hope, the perpetuity, of the conſtitution.

One particular, however, that regards a ſeparate branch of this very venerable body, may be well worthy of our beſt attention. A Lay-Nobleman claims a right by his birth of being tried by his peers. This privilege was granted him, becauſe, being naturally expoſed by his ſtation to envy and reſentment, he could not otherwiſe enjoy thoſe equal univerſal benefits of the conſtitution, to which he was entitled as an Engliſhman. Yet this extraordinary privilege is not, by the conſtitution, granted to the biſhops. In any criminal proceſs, they ſhall be tried by

by their country, that is, by freeholders, *for that they are not of the degree of nobility.* They hold their ſeats in Parliament, *not as dukes, marquiſſes, counts, viſcounts and barons, but by reaſon of their baronies, as in time paſt ſome abbots and priors.*

If we recollect at what a period of the power and influence of the clergy, this nobleſt privilege was refuſed to their pride and ambition; if we reflect, that a biſhop, in thoſe days, like the philoſopher in Horace, was pious, learned, wiſe, humble, hoſpitable, and only not a ſaint, we ſhall entertain a very honourable idea of the ſpirit and wiſdom of the founders of our conſtitution. Such reflections will perhaps impreſs upon us a more awful idea of the

conſtitution itſelf; the ſole intention of theſe papers.

THE third eſtate enters into the conſtitution with leſs dignity and ſplendor, but with greater influence and power. An abſolute and undivided command over the treaſures of the nation, extends their authority through every part of government. All honours in the ſtate are open to their ambition; all employments to their abilities. Many of their privileges ariſe from the conſtitution; ſuch as the immunity of their perſons, during their attendance on the buſineſs of parliament; ſuch as their not being accountable to any other power, but that of their own houſe, for any expreſſions uſed in their debates.

It ſeems the peculiar wiſdom of the conſtitution to ſuppoſe, in every department of government, ſome latent powers ſilently reſiding there, and reſerved for great and critical occaſions. Their authority, not unaptly called reaſon of ſtate, is ſupported by the neceſſity of conjunctures prior to, and ſuperior to all laws. When the public ſafety is concerned, this reaſon ſupercedes all law. It is ſubmitted to with ſilence and reſpect, until it is apparently abuſed. It perhaps would be dangerous, I mean to the public, to inquire too curiouſly into the ſtrict and punctual legality of all the powers, exerciſed by government, and all the privileges claimed by the ſubject. It would be imprudent to aſcertain their bounds, and to determine, thus far only they

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ſhall extend. Perhaps, the power of preſſing ſeamen ſhould not be too ſtrictly examined. There are myſteries in politicks, as well as in religion, which a good politician and a good chriſtian ſhould endeavour to believe, without attempting even to underſtand. May the right of reſiſtance in the people be for ever ſuppoſed! may it never be defined or explained!

LET us prove this reaſoning by an inſtance, though of a much inferior nature, yet not without importance in itſelf, and ſtrictly applicable to the ſubject matter of theſe papers. The government has uniformly and uninterruptedly exerciſed a power of iſſuing warrants againſt ſtate-criminals, *without information upon*

oath

oath, and without ſpecifying the crime, of which they were accuſed. I will not take the proofs of this aſſertion from periods of arbitrary power and prerogative, but from that glorious æra of Britiſh liberty, the Revolution. In the year 1689, the Earl of Arran, Sir Robert Hamilton and others, were ſent to the Tower, and the Lords voted an addreſs of thanks to the King for his care of their liberties. In 1692, the Earls of Huntington and Marlborough were committed to the Tower on the 5th of May, where they continued to the 15th of the next Month, when they were admitted to bail at the King's-Bench bar. Several gentlemen were at the ſame time ſent to Newgate, by virtue of the ſame warrants. When the parliament met, the Earls laid their com-

complaint before the Houſe of Lords, *That they had been committed to the Tower by warrants, in which it was not ſaid, that any information was given againſt them upon oath, and which they alledged to be required by law.*

I SHALL only remark upon this important event, that the laws had then a Lord Chief Juſtice, who did not *diſmiſs them, upon their plea of privilege.* With the conſcious integrity and firmneſs of an upright and honeſt man, as well as with the dignity of his profeſſion, he nobly oppoſed both Houſes of Lords and Commons, in different diſputes with regard to their privileges, and was honoured with the thanks of both Houſes for his oppoſition.

I WILL not entertain ſo mean an opinion of my readers, as to imagine it neceſſary to mention any other of the numerous inſtances, that might be given on this occaſion. Whoever pleaſes to read over the hiſtory of the four laſt reigns, that period of our hiſtory moſt favourable to liberty, will find, that this has been the conſtant and invariable practice of government, except when, upon extraordinary occaſions, the *Habeas corpus Act* has been ſuſpended. Even during the ſitting of parliament, the members of both Houſes have been arreſted. The King ſends a meſſage to the Houſe, whoſe members had been arreſted, which has conſtantly been anſwered with an addreſs of thanks, for his care of their liberties.

WHAT could our anceſtors, thoſe founders of liberty and the conſtitution, mean by intruſting adminiſtration with a power, which was apparently liable to be much abuſed? Did they not foreſee the poſſibility, at leaſt, of this abuſe? Unqueſtionably. But they foreſaw many a probable concurrence of circumſtances; many a criſis, too full of danger, to wait for the regular forms of law. In matters of great importance, the moment of deliberation and execution is the ſame. "The crime is not yet committed. It "is only intended. It is abſolutely ne- "ceſſary, for the public ſafety, to pre- "vent it. The information, ſo it has "happened, may be given by ſome foreign "power in friendſhip with our court. "It may be an anonymous Advertiſe- "ment,

" ment, like that of the Gunpowder-plot.
" The perſon, who makes the diſcovery
" may demand the honour of govern-
" ment, not to be produced as a witneſs.
" The criminal may have notice of any
" common proceſs by a Juſtice of Peace.
" He has time to ſecrete or deſtroy the te-
" ſtimonies of his guilt. He may eſ-
" cape from juſtice. He may ſtill com-
" mit the crime, of which he is ac-
" cuſed."

It was beſides conſidered, that the Miniſters, who iſſue theſe warrants, are anſwerable for any illegality either in the grant or execution. For theſe reaſons therefore, and others, perhaps, more important, our anceſtors have tacitly placed this power in the Secreta-

ries of State. The legality of it has indeed been diſputed in our Courts of Juſtice, and wiſely left undecided. Yet even this indeciſion is a ſtrong preſumptive argument in its favour, and an encouragement to continue it. May we never have a Secretary of State, who, in doubt of the validity of this power, may be tempted to exerciſe any other! I ſhall only add, that we may not loſe the application of all this reaſoning, that the preſent ſecretaries of State acted, on a late occaſion, upon this conſtant practice of their office, handed down to them even through times moſt jealous of public liberty; moſt apprehenſive of the prerogatives of the crown. Beſides, they were particularly authoriſed in the warrant, iſſued againſt Mr. Wilkes. It

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was an exact copy of that, by which Mr. Shebeare was arreſted, and which was ſigned by Lord Chief Juſtice P——t, when he was Attorney-general.

THERE is only one inſtance, with regard to crimes, that affect, or ſeem to affect the ſtate, in which this power of government does not act without controul. The perfect freedom of debate in parliament is ſo eſſential to liberty; ſo abſolutely neceſſary, even in the original idea of all debates, to the proofs of either the rectitude or depravity of any meaſure, propoſed to be conſidered, that it never can ſubmit to any kind or degree of reſtraint, impoſed by power and authority. The magiſtrate or miniſter, of what denomination ſoever, who ſhould attempt to controul this freedom by the

terrors of his office, would be guilty of a greater crime, than that of *læſæ majeſtatis*; the *crimen læſæ conſtitutionis*. It is an high infringement of the privileges of parliament, that even the King himſelf ſhould appear to know the queſtions under debate, until the deciſion of them comes before him in due courſe of law. He may then, by virtue of his prerogative, reject, if he diſapproves; if he approves, he is appointed to execute. But never ſhould the legiſlative and executive powers be lodged in the ſame perſon; never ſhould the perſon, who is to carry a meaſure into execution, have any concernment, influence or intereſt in forming it. Thus ſpeaks all political underſtanding in a free country, *a priori*; thus

thus ſpeaks, at preſent, the Britiſh conſtitution.

But as the King, conſiſtently with the character and office he ſuſtains, cannot enter into the debates of his parliament without violating their privileges, ſo neither could he enter into them with dignity to himſelf. He muſt either, expoſe himſelf, unhappy choice, and perhaps of equal ignominy! to be flattered or cenſured. Even his name ſhould never be mentioned in a debate, in view to the merits of the queſtion.

No member of either Houſe can be named in the other; no one, in the ſame houſe, can be mentioned by his name. Theſe are orders and rules of decency

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and decorum. Shall the King's name be treated with leſs form and decency?

The diſtinction of conſidering the King's ſpeech, as the ſpeech of the miniſtry, under a pretence of oppoſing it with greater decency, is a modern artifice, invented, if I miſtake not, in 1718 by Mr. Walpole, and too incautiouſly, though ingenuouſly acknowledged by Mr. Craggs. The conſtitution knows nothing of theſe diſtinctions. To treat the ſpeech, in general, with decency and reſpect; to conſider the wiſdom and utility of the meaſures it propoſes, and either to reject or receive them upon the arguments of public good—theſe are the ſole objects of a parliamentary debate. All the reſt is little more than an angry, ambitious

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oppoſition on one ſide, and the ſervile flattery of courtiers on the other. How dreadful are the conſequences! A meaſure, wiſe in itſelf and ſalutary, ſhall be loſt to the public by a perſonal reſentment to the miniſter, or ſome iniquitous ſcheme impoſed upon us by the ready flattery, paid to the appearance of ſome undue prerogative. The virtues of the Sovereign, his piety, honour, integrity, and love for his people, ſhall be urged, by the mere creatures of favour and employment, as reaſons to prove the excellence of the meaſure propoſed, and as motives to intruſt him with our lives and liberties. On the contrary, the deteſtation of the miniſter, whether it ariſe from his virtues or his vices; whether from his perſon, his alliances, his friendſhips,

his birth, or even the place of his birth, ſhall be deemed a ſufficient reaſon for rejecting, with a kind of popular horror, a ſcheme perhaps of equal honour and advantage to his country.

In the ſtrongeſt expreſſions, that my ideas of liberty and the conſtitution could ſuggeſt, I have aſſerted the freedom of debate in parliament. If my private opinion were of any weight, I ſhould not ſcruple to affirm, that it ought to be eſteemed as dear to liberty, as any other privilege or right of Magna Charta. The Habeas corpus Act may be ſuſpended, and even the miſchiefs ariſing from any caſual violation of it, are leſs extenſive, leſs dangerous. Yet ſince every thing, that is human, muſt ſubmit to the com-

common lot of humanity, this ineſtimable privilege muſt ſubmit to be reſtrained within ſome certain bounds. It will otherwiſe ſoon degenerate into low altercation and perſonal diſpute. Faction ſhall aſſume rather more than the freedom of patriotiſm, and oppoſition ſhall talk treaſon.

Let us endeavour to apply this general reaſoning to a particular inſtance. Let us ſuppoſe, that ſome certain expreſſions in the North Briton, which an honourable Member of the Houſe of Commons is accuſed of having written, had been ſpoken by him in the Houſe. Some of the King's ſervants; ſome lover of the decency due to all public debates; ſome friend to the conſtitution, would

probably have called upon the gentleman either to retract, explain, or excuſe them. I will not preſume to judge in what manner the Houſe would determine on the occaſion, becauſe the affair, in its preſent form, will certainly come very ſoon before them. Yet Mr. Shippen was ſent to the Tower for only lamenting it as a misfortune to the nation, that King George the firſt was a ſtranger to our language and the conſtitution. Sir William Wyndham was very near being ſent to the Tower, and was reprimanded by the Speaker, by order of the Houſe, for an indignity offered to his Majeſty in reflecting on his proclamation. Yet without meaning any invidious inſinuation either of difference or compariſon between theſe gentlemen and the preſent

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honourable Member, it is neceſſary, in the courſe of argument, to obſerve, that Mr. Shippen was a man of eminent probity in private life, and almoſt peculiar integrity in his public character; of great parliamentary abilities, and a very weighty Speaker. Sir William Wyndham, beſides the natural intereſt of a great fortune; beſides the connexions of his birth and family, was unqueſtionably the ableſt debater, and the moſt powerful Speaker, that ever ſat in the Houſe of Commons. I ſhould indeed confeſs, that I do not mean to call him a *powerful Speaker* with regard to the preſent ideas of eloquence, which ſeems to conſiſt in figures of ſchool-boys and words of dictionaries. I ſhall only beg leave to add, that both theſe gentlemen were ſupported

ported by a numerous and very conſiderable party in the Houſe, yet one of them was ſent to the Tower; the other was reprimanded by the Speaker for expreſſions of far leſs indignity to Majeſty, than thoſe in the North Briton.

Let us now ſuppoſe, that theſe expreſſions had been uttered in the Houſe. The natural warmth of ſpeaking and diſputing; the tone of voice; the geſture and action, with which they were uttered, might ſoften or excuſe the inſult they ſeemed to convey. They might be ſuppoſed to be ſpoken under the ſanction of parliamentary privilege.

We cannot imagine, that the malignity of them, if indeed there were any

malignity

malignity in the intention of the Speaker, could have any extraordinary effect upon the underſtanding of ſuch an audience. They might happily in a little time be forgotten.

But infinite is the difference, when they are given to the people in general. It is confeſſed, they are not given as in the natural heat of diſputation, or with the influence of geſtures and tones of voice, but in the calmeſt and moſt deliberate act of the mind. Yet if we can imagine they were capable of any bad influence in the Houſe of Commons, ſuppoſing them ſpoken there, what dreadful effects may we not expect from them, when addreſſed to an inconſiderate, ill-judging multitude? A mul-

multitude, apt to be inflamed by the groſſeſt artifices; jealous of their liberties, yet credulous, and eaſily believing, though often deceived by profeſſions of zeal and anxiety for their welfare. The words themſelves cannot now be happily forgotten. They enter into our hiſtory, and are to be delivered down to our poſterity.

The ſuppoſed writer has appealed to the Houſe of Commons, by pleading his privilege, as a Member, againſt the regular courſe of juſtice, to which every other ſubject muſt have been amenable. The Houſe therefore will determine on the guilt or innocence of his paper. It is indeed of little importance, either to inquire or determine, whether the gen-

tleman is become this deſperate and devoted patriot (not He, who leaped into the gulph, more devoted) from an exceſs of public virtue, or the diſtreſſes of his private fortune. It were little ſatisfaction for the miſchiefs, which he has, perhaps unintentionally, occaſioned, whether he ſhall be ſent to the Tower, or expelled the Houſe. But it is of capital and intereſting importance, to have that unconſtitutional claim for ever condemned, by which five hundred perſons may hereafter aſſume a privilege of outraging their ſovereign, in a manner, that a private gentleman could not bear without re-

ſenting: A claim, by which they may with impunity write ſtrange letters of menace and inſult to Miniſters of State, for acting according to the ancient and eſtabliſhed forms of their office.

IMPOSSIBLE, that the wiſdom and equity of our parliament ſhould ever ſupport ſuch claims; and if the people ſhall ever ſubmit to them, all ideas of liberty; all the other powers of this wiſeſt frame of government are loſt for ever. The conſtitution itſelf is loſt: That conſtitution, by whoſe influence we are an envied, powerful and happy people: that conſtitution, which animates the labours of agriculture and manufac-

factures; which gives ſpirit to commerce, and ſecurity to property; which inſpires our ſoldiers with courage, and our ſailors with intrepidity, is loſt for ever.

RESENTMENT and indignation; ſhame and anxiety, here ſtop all further reflexions.

FINIS.

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